

of prerogatives held and enjoyed by him; the most of which he may, by a patent under the great seal, grant to an individual. *Bac. Abr. tit. Prerogative, F.* But here no department or branch of our limited government has been entrusted with any such large and uncontrolled power of making grants to individuals. The executive has been prohibited from exercising any such prerogative; and the Legislature have only so much of a discretionary power delegated to them as will enable them to act within their proper sphere for the public good. No *patent can issue from the land office, but according to its settled rule; or for **473** any thing not allowed by law to be sold there according to those rules. Nothing can be sold in the land office, but the State's right of soil in land, and the improvements affixed thereto as parcel thereof. The title of the State of which it there makes sale, is only in such land as had never before been granted to any one; or where an individual had done some acts towards acquiring a title which he had neglected to complete; or where the complete title which had been granted, had fallen back, or escheated for want of an heir or successor of the original grantee, or him who claimed under him, who could take and hold.

Hence it is always distinctly understood, that every one who goes into the land office, with an intention to buy, only proposes to purchase of the State its title to lands held in one or other of these modes; because nothing else can be sold there. A patent from the land office can convey nothing else; it cannot give to the grantee any franchise or privilege which is not necessarily and always embraced in a grant of the legal title to the land itself; it cannot give to the grantee a mere right of way; or a right to demand and collect toll or wharfage anywhere; because such things are not, and cannot be sold or granted in the land office. And, therefore, no question concerning any right to demand and receive toll or wharfage anywhere can be incidentally heard and decided by the Chancellor upon a caveat in the land office.

But if land, to which the State has a title, is in any way incumbered, such incumbered title may well pass by a patent from the land office; and the grantee will take and hold, subject to such incumbrance. As where the owner in fee, after having leased the land for years, died intestate and without heirs; so that his right escheated. It was held, that the grantee from the State, under an escheat warrant, could only take subject to the lease. (*h*) So, too, where the land had been mortgaged before the title reverted to the State. *Hix v. The Attorney-General, Hard.* 176; 1799, ch. 79, s. 7; 1805, ch. 93. And where the State had granted land covered with navigable water; it was held, that the grantee could

(*h*) *LINE'S CASE*, 1680.—At a council held in the land office.—*Land Records*, lib. B. C. fol. 118.